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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,205	09/25/2001	Yu-Cheun Jou	PA010359	2923
23696	7590	05/16/2005	EXAMINER	
Qualcomm Incorporated Patents Department 5775 Morehouse Drive San Diego, CA 92121-1714			HSU, ALPUS	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/965,205

Applicant(s)

JOU, YU-CHEUN

Examiner

Alpus H. Hsu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/3/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by YUN et al. in US2002/0039355 A1.

Referring to claims 1 and 15, by broadly interpreting the detection of the capacity of the reverse link as the claimed state of data connection, YUN et al. discloses a method and a processor for communicating data rate control information comprising: determining a state of a data connection between a mobile station and a base station; and gating transmissions of data rate control information on a data rate control channel, from said mobile station to said base station, based on said determined state (paragraph [0062] lines 3-6).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-14, 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over YUN et al. in US2002/0039355 A1 in view of PARK et al. in U.S. Patent No. 6,747,963 B1.

Referring to claims 2-7 and 16, YUN et al. differs from the claims, in that, it does not disclose the features of having the determined state being an idle Open state to cease

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transmission of data rate information on said data rate control channel or the determined state being a busy Open state to allow transmission of data rate information on said data rate control channel, which are well known in the art and commonly applied in data communications field for channel gating control purpose. PARK et al., for example, from the similar field of endeavor, teaches the specific channel gating control based upon the busy/idle OPEN state (col. 10, line 59 to col. 11, line 3), which can be easily adopted by one of ordinary skill in the art into the method and processor of YUN et al., to further maximize the bandwidth allocation to improve the system efficiency.

Referring to claims 8 and 9, YUN et al. differs from the claims, in that, it does not disclose the features of having the starting and ceasing of transmission of data rate information on said data rate control channel in response to the request of data file delivery, which are well known in the art and commonly applied in data communications field for channel gating control purpose. PARK et al., for example, from the similar field of endeavor, teaches the starting and ceasing of transmission of data rate information on said data rate control channel in response to the request of data file delivery (col. 14, lines 7-17, 40-50), which can be easily adopted by one of ordinary skill in the art into the method YUN et al., to further improve the system efficiency.

Referring to claims 10 and 17, YUN et al. discloses an apparatus for communicating data rate information comprising: a data rate channel gate (405); and a data rate channel gate controller (paragraph [0063] lines 11-17) to control said data rate channel gate.

YUN et al. differs from the claims, in that, it does not disclose the features of having the determined state being an idle Open state to cease transmission of data rate information on said data rate control channel or the determined state being a busy Open state to allow transmission of

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data rate information on said data rate control channel, which are well known in the art and commonly applied in data communications field for channel gating control purpose. PARK et al., for example, from the similar field of endeavor, teaches the specific channel gating control based upon the busy/idle OPEN state (col. 10, line 59 to col. 11, line 3), which can be easily adopted by one of ordinary skill in the art into the method and processor of YUN et al., to further maximize the bandwidth allocation to improve the system efficiency.

Referring to claims 11 and 18, YUN et al. discloses an encoder (117) for encoding data rate information of said data rate channel to produce encoded data rate information; and a transmitter (141 & 143) for transmitting said encoded data rate information and said encoded data targeted for said base station.

Referring to claims 12 and 19, YUN et al. discloses an apparatus for communicating data rate information comprising: a data rate channel gate (405); a data rate channel gate controller (paragraph [0063] lines 11-17) to control said data rate channel gate; and a data channel encoder (131) for encoding data targeted for a base station.

YUN et al. differs from the claims, in that, it does not disclose the features of having the determined state being an idle Open state to cease transmission of data rate information on said data rate control channel or the determined state being a busy Open state to allow transmission of data rate information on said data rate control channel, which are well known in the art and commonly applied in data communications field for channel gating control purpose. PARK et al., for example, from the similar field of endeavor, teaches the specific channel gating control based upon the busy/idle OPEN state (col. 10, line 59 to col. 11, line 3), which can be easily

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adopted by one of ordinary skill in the art into the method and processor of YUN et al., to further maximize the bandwidth allocation to improve the system efficiency.

Referring to claims 13 and 20, YUN et al. discloses an encoder (117) for encoding data rate information of said data rate channel to produce encoded data rate information; and a transmitter (141 & 143) for transmitting said encoded data rate information and said encoded data targeted for said base station.

Referring to claims 14 and 21, YUN et al. discloses a receiver (129) for receiving transmission on said traffic channel from said base station.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Freitas et al., Gilhousen et al., Gardner et al., Esteves et al. '129 & '211, Tanno et al., Padovani et al., and Vijayan et al. are all cited to show the common feature of data rate control message transmission using data rate control channel between mobile and base stations similar to the claimed invention.

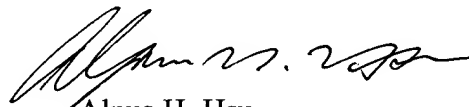
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AHH



Alpus H. Hsu  
Primary Examiner  
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